

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SHAW FAMILY ARCHIVES, LTD., EDITH :
MARCUS and META STEVENS, :
 :
Plaintiffs, : Case No. 05 Civ. 3939 (CM)
 :
-against- : Hon. Colleen McMahon
 :
CMG WORLDWIDE, INC. and MARILYN :
MONROE LLC, :
 :
Defendants. :
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DECLARATION OF MARK ROESLER

MARK ROESLER, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am CEO and Chairman of Defendant CMG Worldwide, Inc. ("CMG"). I respectfully submit this declaration in support of Defendants / Consolidated Plaintiffs' cross-motion for summary judgment on their public domain claim, and in opposition to Plaintiffs / Consolidated Defendants' cross-motion to preclude Defendants / Consolidated Plaintiffs from asserting their public domain claim.
2. As I stated in my previous declaration dated February 12, 2008, CMG, on behalf of Marilyn Monroe LLC ("MMLLC") as its licensing agent, is actively engaged in the business of licensing and exploiting MMLLC's intellectual property rights, including its trademarks and copyrights.

3. I am advised that, in their most recent brief, Plaintiffs claim that I had “fail[ed] to even allege that [we] have any current or ongoing licensing arrangements with anyone concerning any intellectual property.” This claim is not only a gross mischaracterization of my earlier declaration, it is wholly inaccurate. To the contrary, and for avoidance of any doubt where this mischaracterization is concerned, I can confirm that CMG and MMLLC do have current and ongoing licensing arrangements regarding MMLLC’s intellectual property and, likewise, CMG continues to actively offer, negotiate, and close such licensing arrangements for the commercial use of the various Marilyn Monroe intellectual property rights on behalf of MMLLC as agent for MMLLC.

4. Attached as exhibits 1 - 3 are merely a sample of some recent license agreements that have been negotiated and closed by CMG on behalf of MMLLC for the use of, among other rights, MMLLC’s various trademarks and copyrights. In light of recent California legislation regarding the right of publicity, the license agreements also include Marilyn Monroe’s publicity rights. Consistent with my previous declaration, MMLLC and CMG, as agent for MMLLC, intend to continue to exploit and license intellectual property owned by MMLLC even if it is determined that MMLLC does not possess any right of publicity in Marilyn Monroe.

5. In my previous declaration, I also stated that CMG licenses photographs actually owned by MMLLC, including a collection of photographs by Frank Worth. I am advised that Plaintiffs have claimed that there is no reference to Frank Worth and / or the Frank Worth images on our Internet site; this is correct. The reason for this is simple; consistent with my earlier testimony in this Case, it is not the name of a photographer that makes a Marilyn Monroe photograph valuable, but rather the fact that the image itself is a photograph of Marilyn Monroe. Thus, for photographs that MMLLC owns, outside of for possible identification purposes only, there is no benefit to naming the photographer of any particular Marilyn Monroe photograph. Moreover, the Frank Worth photographs are stored in a pass code protected portion of our Internet site. Once again, to avoid all doubt where Plaintiff's erroneous assertion is concerned, attached as exhibit 4 are a sampling of photographs from CMG's website that were taken by Frank Worth.

6. Finally, as I stated in my previous declaration, if successful in their declaratory judgment claim, CMG, as MMLLC's licensing agent, intends to use the various public domain photographs of Marilyn Monroe taken by Sam Shaw in conjunction with MMLLC's existing intellectual property rights, by including them in the collection of available public domain images that CMG actively offers to MMLLC's licensees, for use in conjunction with MMLLC's intellectual property rights. We are in possession of the books *Marilyn Monroe as the Girl* and *Marilyn Monroe. The Life. The Myth.*, as well as the various photographs of Marilyn Monroe that were published in newspapers in connection with the promotion of *The Seven Year Itch* that are the subject of MMLLC and CMG's cross motion for summary judgment. Upon determination that the various Marilyn Monroe photographs taken by Sam Shaw which are the subject of our declaratory judgment claim are in the public domain, CMG is prepared to immediately make said photographs available to our existing and potential licensees simply by digitizing the photographs and displaying the same on our Internet site and our marketing CD together with the other herein referenced public domain Marilyn Monroe photographs which we currently offer. As evidence of our preparedness in this regard, in the past CMG has used photographs previously determined to be in the public domain from the book *Marilyn Monroe. The Life. The Myth.* on our Internet site, and thus obviously have the ability to offer such photographs to existing and potential licensees on behalf of MMLLC upon determination that the same are in the public domain.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 25, 2008.

A handwritten signature in blue ink that reads "Mark Roesler". The signature is written in a cursive style with a large, stylized "M" and "R".

Mark Roesler